

Today is November 19, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. Today's topic concerns an employee's "scope of employment" when determining eligibility for state workers' compensation benefits.

The South Carolina Supreme Court recently considered a case about how an employee's injuries while attending an employer's recreational or social activities may be considered within the "scope of employment" qualifying him for workers' compensation benefits. Stephen Wingham, director of creative solutions, at Jackson Dawson, a marketing, advertising and public relations company, attended a meeting in which managers discussed the importance of team building events for the company. Wingham proposed a company kickball game to his superior who instructed him to move forward with the idea. The superior authorized Wingham to spend \$440.00 on facility rental, T-shirts, and refreshments. Wingham also used the company's intranet to promote and encourage employees to attend the event.

The kickball game was held on a Friday afternoon and approximately half of the company's employees attended. Wingham shattered his tibia and fibula when he jumped out of the way of the kickball and landed the wrong way on his leg. He was transported to the hospital by ambulance, later underwent two surgeries, and was informed that he would need a knee replacement in the near future.

When Wingham filed a workers' compensation claim, a South Carolina Workers' Compensation Commissioner denied it because the injury did not arise out of the or in the course of his employment because he was not required to attend the event. The full Commission affirmed the Commissioner's decision, and Wingham appealed his case to the South Carolina Court of Appeals which upheld the Commission's decision. The court of appeals cited cases involving the "substantial evidence standard test" which occurs when the whole record is considered, and the evidence would allow reasonable minds to reach the same conclusion.

Subsequently, the Supreme Court granted "certiorari," an order for a lower court to produce its record of the case so a higher court may consider it. The Supreme Court noted that South Carolina Workers' Compensation law should be liberally construed in favor of providing coverage and reasonable doubts should be resolved in favor of coverage for the employee.

The supreme court observed that courts consider whether a recreational or social activity is within the course of employment if the activity meets one of the following factors: (1) the activity occurs on the employer's premises during a lunch or recreation period as a regular part of employment, (2) the employer brings the activity within the orbit of employment by expressly or implicitly requiring participation or making the activity part of employees' duties, or (3) the employer derives a substantial direct benefit from the activity beyond the intangible benefit of improving employees' health and morale, which is common to all kinds of recreational and social activities.

Wingham argued that his injury was in the scope of his employment due to factors two and three. While the event was voluntary for most of the employees, Wingham's participation was expected and not voluntary because his supervisor and he considered his presence vital to the task of organizing the event and considered his attendance a part of his job. The supreme court found the law is clear that, when determining whether an employee was required to attend an event, a directive to attend is not necessary if the employee is made to understand that he is to take part in the event.

The South Carolina Supreme Court held that Wingham was entitled to workers' compensation benefits, reversed the court of appeals' decision, and sent the case back for a hearing on disability benefits. While the Supreme Court was clear that its decision was based on the specific facts of the case, employers should assess how their involvement, oversight, and control may impact employees' "scope of employment" and affect their workers' compensation benefits costs. Thank you.